

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS
MINUTES**

February 8, 2011

10:00 a.m. – 2:00 p.m.

State Courts Building, Room 119 A/B
1501 W. Washington St., Phoenix, AZ 85007

MEMBERS PRESENT

Honorable Carol Scott Berry
Allison Bones
Cathy Clarich
Joi Davenport
Joan Fox, DDS
V. Michele Gamez, Esq.
Professor Zelda Harris
Bridget Humphrey, Esq.
Honorable Carey Hyatt
Honorable Joseph P. Knoblock
Patricia Madsen, Esq.
Dana Martinez
Honorable Wendy Million
Jerald L. Monahan (proxy Barbara
Duft)
Honorable Cathleen Brown Nichols
(telephonic)
Marla Randall (telephonic)
Honorable Emmet Ronan
Renaë Tenney
Det. Eugene Tokosh
Tracey Wilkinson

MEMBERS ABSENT

Dr. Kathy S. Deasy
Gloria Full
Leah Meyers
Heidi Muelhaupt
Captain David Rhodes
Andrea K. Sierra

STAFF

Kay Radwanski
Lorraine Nevarez

GUESTS

Raquel Balcazar, Lay Legal Advocate
Leslee Garner, AOC
Honorable Dennis Lusk, Apache Junction
Kristin Moyer Pruszynski, AOC
Jeff Schrade, AOC
Nicole Siqueiros, Esq.
Rene Siqueiros, Esq.

I. CALL TO ORDER

A. Welcome and Opening Remarks

Honorable Emmet Ronan, chair, called the September 14, 2010, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) to order at 10:07 a.m.

Judge Ronan welcomed and introduced the reappointed members Patricia Madsen, Community Legal Services; Renaë Tenney, Maricopa Association of Government; Leah Meyers, Governor's Office for Children, Youth and Families, and the newly appointed members Honorable Carey Hyatt, Superior Court in Maricopa County; Dana Martinez, A New Leaf; Captain David Rhodes, Yavapai County Sheriff's Office; Detective Eugene Tokosh, Avondale Police Department; and Cathy Clarich, Glendale Municipal Court. All members introduced themselves.

B. Approval of Minutes from September 14, 2010

Minutes of the September 14, 2010, CIDVC meeting were presented for approval.

MOTION: Motion was made and seconded to approve the September 14, 2010, meeting minutes. Motion passed unanimously.

II. Domestic Violence and Immigrants

Nicole Siqueiros and Rene Siqueiros, attorneys at law, and Raquel Balcazar, lay legal advocate, presented on the unique hurdles immigrant domestic violence victims face when attempting to access the legal and social system. Specifically, some challenges faced by immigrant DV victims include:

- Language barriers
- Cultural and religious issues (pressure from their own community to remain in the marriage)
- Perceptions of law enforcement and the legal system
- Fear of deportation

They noted some tips on ways to assist immigrant domestic violence victims, including:

- Identify translators and interpreters who have appropriate training.
- Provide education regarding the legal system.
- Identify support community organizations that provide advocacy services.
- Provide education regarding VAWA and other immigration benefits.
- Ensure the victim receives effective services that incorporate cultural needs.

Ms. Siqueiros noted the following obstacles that hinder assistance to immigrant DV victims:

- A limiting definition of domestic violence
- Locating translators and interpreters for the specific victim's language
- The requirements of specific identification documentation specifically, regarding notaries and filing petitions.

The presenters identified a specific case in which a victim was unable to access the courts because she had no identification. Judge Ronan noted that this issue can be reviewed by a committee workgroup.

III. Proposed Amendment to ARPOP Rule 6 -- Arizona State Bar Family Law Practice and Procedure Committee

Patricia Madsen, Community Legal Services, reported about the State Bar Family Law Practice and Procedure Committee's draft petition to amend ARPOP Rule 6, regarding Injunctions Against Harassment and firearms. The focus of the petition is to address whether a judicial officer can prohibit possession of firearms on Injunctions Against Harassment in the same way as allowed by the Order of Protection statute. The amendment would supplement ARPOP Rule 6(E)(4)(e)(2), relating to Injunctions Against Harassment, by adding the same "credible threat" language as in Rule 6(C)(5)(d)(1) regarding Orders of Protection.

IV. Subpoena Costs and Orders of Protection

Betsy Jo Fairbrother, victim services specialist, Chandler Police Department, discussed a concern

about a fee charged by some courts to issue subpoenas. Many police departments require their officers to be subpoenaed in order to testify in any case (family, criminal, juvenile, probate). Ms. Fairbrother said that municipal courts do not charge for subpoenas and the justice courts routinely waive the charge for these subpoenas. A subpoena issued by the Maricopa County Superior Court; however, is roughly \$30. Ms. Fairbrother inquired of options to modify this court policy allowing subpoenas for OOP hearings to be waived. She said the fee creates a barrier for some DV victims who cannot afford to pay this fee.

Judge Hyatt said she meets regularly with the office of the Clerk of Court at Superior Court in Maricopa County and will discuss this issue.

V. Changes to COJET Code Sections

Jeffrey Schrade, director of the AOC's Education Services Division, presented proposed changes to two sections of the Arizona Code of Judicial Administration regarding COJET. Specifically, ACJA § 103(H)(4)(b) discusses training regarding domestic violence. Part of the proposed code amendment would strike the word "regular" from a provision on protective order training. The code currently requires judges and court staff who work with protective orders to "attend training on such orders and injunctions on a regular basis." The code was amended in 2008 to preserve a training policy that had been established in 1998. Mr. Schrade said the word had been stricken because it is imprecise. Judge Wendy Million made a motion that the code be amended to require judges to attend DV training "on an annual basis." Such training could be accomplished by a variety of methods, such as in-person or computer-based training. Mr. Schrade said he will take CIDVC's concerns to the COJET Committee on March 3. The code changes will be presented to AJC on March 24.

MOTION: CIDVC to recommend the language in ACJA § 103(H)(4)(b) be modified to include "to attend training on such Orders of Protection and Injunctions Against Harassment on an annual basis." Motion passed unanimously.

The second proposed amendment is to ACJA § 1-108. Mr. Schrade explained that a significant change was made to include membership of one professor from the Phoenix School of Law to the Judicial College of Arizona (JCA) membership. Other changes included technical corrections.

MOTION: CIDVC to approve ACJA § 1-108 as submitted. Motion passed unanimously.

VI. Distances on Protection Orders

Judge Dennis Lusk requested discussion on the challenges of having distances on Orders of Protection. Inclusion of physical distances makes it difficult to ensure compliance of these orders. He said distances are difficult to measure and easy to technically violate.

Comments:

- Some police officers direct plaintiffs to request modification of protective orders to include a distance. Another view, however, is that if an order states that the defendant have "no contact" with the plaintiff, it means no contact. It was noted that officers are not authorized to give legal advice.

- Detective Eugene Tokosh said law enforcement officers see that courts are inconsistent, as some orders have distances and others do not.
- Judge Million said that sometimes a distance is necessary, such as when a defendant deliberately parks close to a plaintiff in a public place. Distances also may be effective in keeping a stalker away from a victim.

VII. Workgroup Organization

Ms. Radwanski noted the various workgroups that committee members can join. The workgroups meet during the CIDVC meeting lunch break. A workgroup member does not have to be an appointed CIDVC member. The workgroups are:

- ARPOP
- Best Practices
- Education
- Forms and Practices
- CPOR Policy

VIII. Legislative Update

Amy Love, AOC's legislative liaison, provided an update of legislative proposals of interest to CIDVC that have been introduced in the Arizona legislature. She provided the following status report:

HB 2302: protected address; secretary of state (Rep. Mesnard)
<http://www.azleg.gov/legtext/50leg/1r/bills/hb2302p.pdf>

The safe at home program will be established; residential addresses shall be kept confidential and not accessible by the general public for those who have been subject to domestic violence, sexual offenses, stalking, or harassment. Participants will receive a substitute address for their lawful address of record and the secretary of state will establish a method for forwarding mail to the participant. This program will end July 1, 2021.

The program will be funded by an assessment of domestic violence and sex crime cases.

There will be a strike everything amendment, this bill is a placeholder.

Titles affected: 41

H2302: DOMESTIC VIOLENCE VICTIMS; PROTECTED ADDRESS 1/20 referred to House gov.

HB 2588: name change records; stalking victims (Rep. Proud)

A victim of stalking or an individual who is under an order of protection or an injunction against harassment and who applies for a name change may request a court to seal the change of name judgment if it is granted.

Title affected: 12

NAME CHANGE RECORDS; STALKING VICTIMS 2/7 referred to house mil-pub.

HB2658: domestic violence review teams (Rep. Proud)
<http://www.azleg.gov/legtext/50leg/1r/bills/hb2658p.pdf>

Expands the charge of the domestic violence review teams established by local governments to include incidents of near fatal domestic violence, defined as an assault committed by a party to the

domestic violence. Expands the list of recipients who are required to be provided copies of the reports to include the Peace Officer Standards and Training Board and the state domestic violence coalition.

Titles affected: 41

SB1080: custodial interference; classification (Sen. Gray)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1080s.pdf>

The law defining the crime of custodial interference is clarified to state that the class 1 (lowest) misdemeanor classification applies only if the child (or incompetent adult) is returned by the parent or defendant, or the agent or either, before an arrest warrant is issued and no later than 48 hours after the child was taken.

Titles affected: 13

CUSTODIAL INTERERERENCE; CLASSIFICATION 1/27 passed Senate 28-0; ready for House.

SB1083: domestic relations, child custody (Sen. Gray)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1083p.pdf>

A noncustodial parent is entitled to reasonable parenting time and to documents and other information about the child unless the court finds that parenting time would seriously endanger the child or that having information would seriously endanger the child or custodial parent. Requires each parent to keep the other informed of current address and contact information unless the court determines the information should be protected due to safety issues. A parent may file an ex-parte request to protect the physical address or some or all of the contact information.

Repeals § 25-408: Rights of noncustodial parent; parenting time; relocation of child; and replaces it with a new section.

Outlines the requirements for notification between parents for change in physical address, as well as requirements for objecting to the move, including time limits.

A parent must provide written notice to the other parent within four days after the parent knows of any actual or impending change to physical address. A parent intending to move must provide sixty days notice prior to relocating the child. If an objection is filed the parent may not move without a request a court order issued after a hearing. The nonmoving parent has twenty days after notice in which to request a hearing to prevent the move if it will substantially or adversely impact a current court ordered parenting plan or written agreement on parenting time. A parent who wants to move can also ask for a hearing. The court shall consider the child's best interest in determining whether to allow the parent to move in. Burden of proof is on the moving parent. Outlines considerations the court will make in determining the best interests of the child, relating to change in address.

If the moving parent has primary physical custody and has exclusive right to make educational decisions and the move will allow reasonable and meaningful access not significantly less than that provided for in the parenting order there is a presumption in favor of the move. Contains a provision for a temporary relocation for health, safety, employment or involuntary change of address.

A hearing on the petition to relocate is not required to comply with § 25-511 or Rule 91(d).

In § 25-803(C), Persons who may originate proceedings, makes a change in reference from § 25-408 to § 25-403.

Titles affected: 25

S1083 DOMESTIC RELATIONS; CHILD CUSTODY 1/11 referred to Senate pub-hu ser.

SB1283: child custody; military families (Sen. Sinema)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1283p.pdf>

Removes the requirement that a custodial parent who is a member of the US armed forces file a military family care plan prior to any deployment. Requires the court to enter a temporary order modifying parental rights during a period of military deployment or mobilization on motion of either parent if the deployment or mobilization will have material effect on the military parent's ability to exercise parental rights and responsibilities or parent-child contact. Requires the court to allow a parent to present testimony and evidence by electronic means on motion of a deploying parent if reasonable advance notice is given and good cause is shown. The court is required to hear motions for modification due to deployment as expeditiously as possible.

Permits a military parent to request the court to delegate parenting time to a family member or other individual with whom the child has a close and substantial relationship if the court finds that doing so is in the child's best interest. Prohibits the court from delegating parenting time to person who would otherwise be subject to limitations. Directs the parents to utilize the dispute resolution process outlined in their parenting plan unless excused by the court for good cause. Clarifies that a court order delegating parenting time does not establish a separate right to parenting time for a person other than the parent.

Temporary modification orders must include a specific transition schedule to facilitate a return to the pre-deployment order within ten days after the deployment ends, taking into consideration the child's best interests.

Prohibits the court from entering a final order to modify parental rights and parent-child contact in an existing order until 90 days after the end of temporary military duty, deployment, activation or mobilization orders. Applies to the parent with whom the child resides a majority of the time and an exemption is made if both parents agree to a modification.

Prohibits the court from considering absence cause by deployment or mobilization or the potential for future deployment or mobilization as the sole factor supporting a real, substantial and unanticipated change in circumstances. Summary amended 2-8-11

Titles affected 25

CHILD CUSODY; MILITARY FAMILIES 2/8 Senate vet-mil amended; report awaited.

SB1336: community property exclusion; military retainers (Sen. Antenori)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1336p.pdr>

Military retainer pay awarded at any time to a spouse who is a veteran is the separate property of that spouse.

Titles affected: 25

COMMUNITY PROPERTY EXCLUSION; MILITARY RETAINERS 1/31 referred to Senate vet-mil.

SB1396: domestic relations; support; community restitution (Sen. Allen)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1396p.pdf>

Requires the court to provide written notice to all parties in a custody proceeding of the right to have a written court analysis and conclusions of fact and law regarding child custody, community property/debt, and child support. If requested, the written analysis must include a detailed list of facts, case law, and statutes supporting the decision.

Allows an obligor to petition the court to stay all remedies for their failure to provide support if

that parent has lost employment and demonstrates to the court that the parent has made, and is making, reasonable and good faith efforts to furnish support. That parent must demonstrate they are actively seeking verifiable and bona fide employment by producing documents to the court of having submitted at least three employment applications each week, or other substantive evidence. During an obligor's period of unemployment the obligor must provide the other parent and the court a weekly report of the obligor's job-searching activities. The non-paying parent may request a hearing for non-compliance to this section. Reiterates that unemployment benefits are subject to the child support guidelines.

In lieu of incarceration or a fine, the court may order the obligor found in violation to serve 40 hours per month of community restitution at a nonprofit organization approved by the court until they comply with the support obligation or they gain employment. The obligor must submit proof of compliance by providing the court a monthly affidavit on the nonprofit's letterhead indicating the dates and times they served. Community restitution does not eliminate or reduce the obligor's support obligations. If the obligor fails to comply, the court may revoke the obligor's participation in community restitution and sentence them to serve a term of incarceration.

Title affected: 25

DOMESTIC RELATIONS; SUPPORT; COMMUNITY RESTITUTION 1/31 referred to Senate pub-hu ser.

SB 1425: Assessment; family offenses; domestic violence (Sen. Nelson)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1425p.pdr>

A person convicted of a violation of harassment, aggravated harassment and stalking or an offense of specified family offenses shall pay an additional assessment of \$50,j which will be deposited by the state treasurer in the victim compensation and assistance fund to be used to fund domestic violence shelters.

Titles affected: 12, 41

S1425: ASSESSMENT; FAMILY OFFENSES; DOMESTIC VIOLENCE 2/1 referred to Senate jud- approve.

IX. Progress Report: Recovery Act STOP Grant Project

Leslee Garner, AOC, provided an update of the AOC's Recovery Act STOP Grant projects. She noted the following projects:

- A one-hour computer based training module titled Domestic Violence 101 has been developed and is available for judges. The CBT, which judicial officers are required to view before attending New Judge Orientation, is designed to help them gain a better understanding of domestic violence. The CBT has already been viewed by more than 200 judicial officers.
- The DV Benchbook has been updated and released.
- The AOC is in the process of developing interpreter language cards to assist in locating an interpreter for specific languages.
- The AOC is in the process of translating scripts and other Order of Protection information into different languages.

Ms. Garner noted the upcoming DV Summit on March 3, 2011, at the Tempe Buttes. The cost is \$30.

X. Update on MAG Protocol Evaluation Project

Rena Tenney, Maricopa Association of Governments (MAG), provided an update regarding the organization's Protocol Evaluation Project. The purpose of the project is to assess protocols used to arrest and prosecute domestic violence offenders. This project is supported by the Governor's Office and the STOP Violence Against Women Grant funding. This project is aimed to increase DV safety and hold more abusers accountable. A full day summit was held on December 1, 2010, to discuss ways to improve the process. The next meeting will be February 28 at the MAG office to discuss the input and information that has been received.

XI. Workgroup Reports

A. *ARPOP* (Judge Elizabeth Finn, chair) – This workgroup met to discuss adding language to the Plaintiff's Guide Sheet, Defendant's Guide Sheet and Order of Protection forms to clarify that a defendant must meet the statutory requirements for issuance of a protective order. Language on the forms has been misinterpreted by some defendants, leading them to believe that they are entitled to a protective order simply by requesting one. The issue will be referred to the Forms Workgroup for further review.

The workgroup also discussed whether it is appropriate for a judge to conduct an *ex parte* protective order hearing at the counter. The workgroup members favored judges being able to conduct an *ex parte* hearing in a less formal setting. Orders of Protection are sometimes granted by video conference, and making the process more restrictive by requiring heightened formality would hinder victims.

B. *CPOR Policy* – Did not meet.

C. *Best Practices* (Hon. Wendy Million) – Judge Million reported that the section on Frequently Asked Questions for Judges has been completed. The workgroup is in the process of determining an avenue to disseminate the information to the judges. She also suggested that since this workgroup has completed its task of preparing a best practices report, it could be combined with the Education Workgroup.

D. *Education* (Allie Bones, chair): Ms. Bones reported that the workgroup has been working with Ms. Garner regarding the March DV Summit. The workgroup also discussed ways to encourage people to attend the summit and other DV-related training sessions. Ms. Bones said there is a need for new speakers and new topics. She suggested coordinating with AZPOST and APAAC and said issues specific to rural and metropolitan areas also need to be addressed.

E. *Forms and Practices* (Hon. Elizabeth Finn, chair): Ms. Radwanski advised the committee that changes on automated protective order forms would require technical changes in case management systems. Some of the case management systems in use in the courts are supported by the AOC's IT Department, while a number of others are supported by technical teams employed directly by those courts.

Ms. Radwanski noted that part of Justice O'Connor's domestic violence initiative was to establish a taskforce on service of protection orders. There have been challenges for plaintiffs

having orders served. Ms. Radwanski has been asked to lead a workgroup to discuss what changes, if any, should be made to protection order forms to facilitate service.

Ms. Bones noted the Coalition Against Domestic Violence, Phoenix School of Law, and ASU Sandra Day O'Connor College of Law are working together to establish a court watch program. They are in the early stages of development and currently are establishing an advisory board.

XII. Call to the Public

There was no public comment.

XIII. Adjournment

The meeting was adjourned at 2:09 p.m.

Next Meeting:

Tuesday, May 10, 2011

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 119 A/B